



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed September 24, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Dane County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on October 13, 2015, at Madison, Wisconsin.

The issue for determination is whether the agency correctly determined petitioner liable for a FoodShare (FS) overissuance in the amount of \$5,204.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.
2. Petitioner was a FS recipient using the homeless generic address as her WI address for FS purposes.

3. Petitioner contacted the agency on 10/6/14 to get FS benefits reopened after the case had been closed due to lack of verification. Petitioner asserted that she was homeless and lived in WI.
4. Petitioner reaffirmed this information at reviews on 12/16/14 and 2/2/15.
5. Petitioner had contracted to lease an apartment under the name [REDACTED] in Indiana on 9/26/14 for a one-year period at [REDACTED]
6. Petitioner contracted to lease [REDACTED] on 4/21/15 under the name [REDACTED]
7. On 8/24/15 petitioner applied for W2 in the state of Wisconsin.
8. On 9/22/15, the agency issued a FS overpayment notice in the amount of \$5,204 for the period from 10/1/14 to 8/31/15.

DISCUSSION

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS due to an intentional program violation, an inadvertent household error (also known as a “client error”), or an agency error (also known as a “non-client error”). 7 C.F.R. § 273.18(b), see also *FoodShare Wisconsin Handbook*, Appendix 7.3.2. Generally speaking, whose “fault” caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. The controlling federal regulation requires establishment of a claim against a household for a FS overpayment regardless of whose error caused the overpayment to occur: “The State agency shall establish a claim against **any household that has received more food stamp benefits than it is entitled to receive . . .**” 7 C.F.R. § 273.18(a).

In a Fair Hearing concerning the propriety of an overpayment determination, the county agency has the burden of proof to establish that the action taken by the county was proper given the facts of the case. The petitioner must then rebut the county agency's case and establish facts sufficient to overcome the county agency's evidence of correct action.

During the hearing, the agency asserted that petitioner was residing in Indiana while receiving FS benefits in WI. Per the *FoodShare Wisconsin Handbook*, §1.2.3.5, state residency, as a required eligibility factor, must be verified through documents or collateral contact. If it becomes known that a FS applicant or member does not reside in Wisconsin, action must be taken to deny or terminate FS benefits for this individual. The Department relies on that provision. Furthermore, the agency asserts that the petitioner was not a resident who was temporarily absent from the state under *FoodShare Wisconsin Handbook*, §3.2.1.2 which provides an exception if a person leaves the FS household with the intent to be gone for fewer than 60 days and to return to the FS household.

The agency provides substantial evidence of the petitioner's existence in Indiana during the period of the overpayment. The evidence includes two apartment rental leases, government identification card, numerous reports to government authorities in Indiana and Wisconsin of her residence address in Indiana and a physical presence in Indiana with FS card use in Indiana for a vast majority of the time of the overpayment period. The agency also provided evidence that petitioner used at least one alias in the renting of the apartment. Petitioner's credibility is not helped by her use of numerous names as it supports the suggestion of consciousness of guilt and intentional misrepresentation.

Petitioner asserts that she only travelled to Indiana to care for a sick relative. She explained that even her probation officer knew she was visiting the relative and gave permission. The evidence simply and convincingly leads to a conclusion that this was more than occasional and temporary visits. It is irrelevant to my determination what a probation officer did believe or did permit. Petitioner asserts that she was not the person who rented an apartment in 2014 at [REDACTED] even though the landlord

testified that she is the same person as [REDACTED] who signed the second lease for the apartment [REDACTED]. Petitioner states that the landlord is lying for some inexplicable reason. I am not persuaded. The petitioner's argument is self-serving while the Indiana landlord has no apparent bias or reason to lie to help the agency. The landlord appeared credible and identified a photo of petitioner as [REDACTED]. For purposes of the FS program, petitioner appears to have actually only occasionally and temporarily visited WI from her more stable residence in Indiana during the pertinent time.

CONCLUSIONS OF LAW

The agency did not err in its determination of the \$5,204 FS overissuance as petitioner was a resident of Indiana during the overissuance period.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

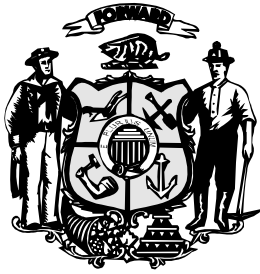
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 18th day of November, 2015

\sJohn P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 18, 2015.

Dane County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability